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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re Z.G., a Person Coming Under the
Juvenile Court Law.

2d Juv. No. B240620
(Super. Ct. No. J1379457)
(Santa Barbara County)

SANTA BARBARA COUNTY CHILD
WELFARE SERVICES,

Plaintiff and Respondent,

v.

M.D., et al.,

Defendants and Appellants.

M.D. (Mother) and M.G. (Father) appeal an order of the juvenile court terminating their parental rights to their son Z.G. (Welf. & Inst. Code, § 366.26, subd. (c)(1).)¹ Father contends the court abused its discretion and denied him due process by refusing to conduct a contested hearing on two of the statutory exceptions to termination of parental rights. (§ 366.26, subd. (c)(1)(B)(i) & (v).) Mother does not challenge any finding or order of the court, but contends that, if this court reverses the order terminating Father's parental rights, it must also reverse the order terminating her parental rights. We affirm.

¹ All statutory references are to the Welfare and Institutions Code.

FACTS

Mother and Father are the parents of Z.G. who was born in July 2010. On August 10, 2010, Santa Barbara County Child Welfare Services (CWS) filed a dependency petition alleging failure to protect by Father and Mother and sibling abuse by Mother. (§ 300, subds. (b), (j).)

The petition alleges that father has an extensive criminal and substance abuse history, and a history of domestic violence against Mother. It alleges that Mother also has an extensive criminal and substance abuse history, suffers from serious mental illness, and had her parental rights to another child terminated in 2007.

A September 2010 jurisdiction and disposition report by CWS recommended reunification services for Father and bypassing services for Mother. At the November 10, 2010, jurisdiction hearing, the court sustained the petition. Z.G. was placed in a foster home and six months of reunification services were ordered for Father only. Mother appealed the denial of reunification services and we affirmed the order on July 18, 2011. (*In re Z.G.*, B229378 [nonpub. opn.])

In its report for the six-month review hearing, CWS recommended termination of reunification services for Father. The report stated that Father had failed to find a suitable and stable residence for himself and his children, and had failed to stay free from drugs or demonstrate an ability to live free from drug dependency. The report also stated that Father had missed 14 drug tests between November 2010 and February 2011, had been arrested three times during the six-month review period, and had served 80 days in jail. Father completed a methadone treatment program prior to his incarceration, but missed a drug test shortly after his release from jail. The report stated that his supervised visits with Z.G. were adequate in quality but inadequate in frequency.

At the May 26, 2011, six-month review hearing, Father testified that he had been unemployed for the prior six months. He testified that he had been employed delivering furniture but quit because the job interfered with his drug testing. He also testified that he was unable to get another job because he broke his hand. Social worker

Melissa Faria testified that there had been no change in his living situation or employment, and that he had missed visits with Z.G. in May 2011.

After the hearing, the juvenile court found by clear and convincing evidence that Father had failed to adequately participate in his case plan. He had no housing or employment, did not test for drugs regularly, and failed to provide any clean tests. The court noted that his 80-day incarceration prevented full participation in the case plan for a period of time but that incarceration was his own doing. The court terminated reunification services for Father, and set the case for a section 366.26 permanent plan hearing for both Father and Mother.

The September 2011 CWS report for the section 366.26 hearing recommended the termination of parental rights of both Father and Mother. The report stated that Z.G. was "eminently" adoptable and that he had recently been placed in a prospective adoptive home. The report stated that Father had not successfully addressed his drug problems and did not maintain a healthy and sober lifestyle. Father was participating in once a week supervised visitation, but the child showed "consistent discomfort and anxiety when separated from his caregivers," and engaged in "constant crying" during visits with Father.

On March 12, 2012, Father and Mother requested contested section 366.26 hearings. At the court's direction, both Father and Mother filed offers of proof to support their requests. Father sought retention of his parental rights under the beneficial parental relationship and beneficial sibling relationship exceptions set forth in section 366.26, subdivision (c)(1)(B)(i) and (c)(1)(B)(v). His offer of proof stated that he had attended all his scheduled visits, that Z.G. was excited to see him and called him "daddy," and that Z.G. would have the love of his brothers, sisters and grandparents. The offer of proof also asserted that he had obtained suitable housing and has remained employed with the same employer for two and one-half years doing seasonal work. Mother's offer of proof focused on the abusive behavior of Father, and admitted that she had left the area and had had no contact with Z.G. for an extended period of time.

At the April 5, 2010, section 366.26 hearing, the juvenile court found that the offers of proof submitted by both Father and Mother were insufficient to warrant a contested hearing. The court agreed with counsel for CWS that the child has been out of Father's care for virtually all of his life and the benefits of a permanent home outweighed any considerations raised in Father's offer of proof. Mother conceded that, based on her abandonment of visitation, she had no grounds for a contested hearing. The court ruled that there was clear and convincing evidence that Z.G. was adoptable, and terminated the parental rights of Father and Mother.

DISCUSSION

Father contends that the juvenile court erred by denying Father's request for a contested evidentiary hearing under section 366.26 and argues that his offer of proof established the parental benefit and sibling relationship exceptions to termination of parental rights. (§ 366.26, subd. (c)(1)(B)(i) & (c)(1)(B)(v).) We disagree.²

When the juvenile court finds that a child may not be returned to his or her parents, section 366.26, subdivision (c)(1) requires the court to terminate parental rights if the child is likely to be adopted, unless there is a compelling reason to conclude that termination would be detrimental to the child based on one or more specified exceptions. Father claims that two exceptions apply in this case: The "beneficial parental relationship" exception set forth in section 366.26, subdivision (c)(1)(B)(i)),³ and the "beneficial sibling relationship" exception set forth in section 366.26, subdivision (c)(1)(B)(v).⁴

² Mother makes no substantive contentions but asserts that, if Father's parental rights are restored, applicable case law requires the restoration of Mother's rights. (*In re Mary G.* (2007) 151 Cal.App.4th 184, 208.) CWS concedes this issue, but it is moot based on our affirmation of the trial court's order.

³ Section 366.26, subdivision (c)(1)(B)(i) provides: "The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship."

⁴ Section 366.26, subdivision (c)(1)(B)(v) provides: "There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or

The parent has the burden of proving these exemptions. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.) In addition, the juvenile court has discretion to require an adequate offer of proof as a prerequisite to conducting a contested hearing on a claimed section 366.26 exception. (*In re Earl L.* (2004) 121 Cal.App.4th 1050, 1053.) Requiring an adequate offer of proof to insure the parent has evidence of significant probative value does not violate a parent's due process rights. (*In re Tamika T.* (2002) 97 Cal.App.4th 1114, 1122.) "The offer of proof must be specific, setting forth the actual evidence to be produced, not merely the facts or issues to be addressed and argued." (*Id.* at p. 1124.)

In reviewing the juvenile court's order, we draw all reasonable inferences in support of its factual findings, consider the record most favorably to the findings, and affirm any order supported by substantial evidence even if other evidence supports a contrary conclusion. (*In re C.F.* (2011) 193 Cal.App.4th 549, 553.) Moreover, the juvenile court must balance any detrimental impact on the child from severing parental or sibling relationships against the benefit of adoption to the child. (*In re Bailey J., supra*, 189 Cal.App.4th at p. 1315.) We review this "quintessentially" discretionary decision under the abuse of discretion standard. (*Ibid.*)

Here, we conclude that the juvenile court reasonably concluded that Father's offer of proof was insufficient to warrant a contested evidentiary hearing. The offer of proof failed to identify actual evidence supporting the claimed statutory exceptions. It relied upon evidence in the prior record and his interpretation of visits with his son, as well as promises of a loving home in the future. We also conclude that there was clear and convincing evidence in support of the juvenile court's order terminating parental rights.

has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption."

Parental Relationship. Parental rights should be terminated unless there is a "compelling reason" that termination would be detrimental to the child based on a parent having "maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) The existence of a beneficial relationship is determined by the age of the child, the portion of the child's life spent in parental custody, the quality of interaction between parent and child, and the child's particular needs. (*In re Amber M.* (2002) 103 Cal.App.4th 681, 689.)

The parent must show he or she occupies a parental role in the child's life with a significant, positive, emotional attachment of child to parent. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) A parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during visitation or that may be beneficial to the child to some degree. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) There must be "more than frequent and loving contact, an emotional bond with the child, or pleasant visits." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.) Continuation of the parent-child relationship must promote "the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents." (*In re Autumn H.*, at p. 575.) A parent can establish the exception only in extraordinary cases because the permanent plan hearing occurs after the court has found the parent unable to meet the child's needs. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.) Unless an adoptable child will suffer great detriment by terminating parental rights, the court must select adoption as the permanent plan. (*In re Dakota H.*, at p. 229.)

Father has failed to meet his burden of proof. More than half of his two-paragraph offer of proof is devoted to assertions that Z.G. appears happy during weekly supervised visits and the child would receive the love and support of Father and his family. These are conclusory assertions which do not identify any evidentiary support.

The record clearly shows only once a week supervised visits and, because Z.G. was removed from parental custody a month after his birth, there is no basis to conclude that Father's contact with Z.G. rises to the level of a significant parental relationship which will promote the well-being of the child to a degree that outweighs the benefits of adoption. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) In addition, Father's assertion of a stable employment situation is contrary to other evidence in the record and, although finding new housing is a significant improvement, it does not show a beneficial parental relationship.

Sibling Relationship. Parental rights should be terminated unless the trial court finds a "compelling reason" that termination would be detrimental to the child because it would constitute a "substantial interference with a child's sibling relationship." (§ 366.26, subd. (c)(1)(B)(v).) This statutory language places a heavy burden on the parent to show that interference with a sibling relationship would be so detrimental as to outweigh the benefits of adoption. (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 998; *In re Celine R.* (2003) 31 Cal.4th 45, 61.)

For reasons similar to those we have already discussed, Father has failed to meet his burden of proof. Critical factors are whether the siblings were raised in the same home, have existing close and strong bonds, and whether ongoing contact is in the child's best interests, as compared to the benefit of adoption. (§ 366.26, subd. (c)(1)(B)(v).) Father has two older children, and his offer of proof asserts that Z.G. recognizes his siblings and plays with them. But, the children have never lived together and the only opportunity for contact or "common experiences" was during any of Father's supervised visits which the siblings may have attended. Father asserts that Z.G. would have the support of his siblings if placed in Father's care, but there is no realistic possibility that a relationship of any significance exists, or that continued contact would

be in Z.G.'s best interest.

The judgment is affirmed.

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PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Arthur A. Garcia, Judge
Superior Court County of Santa Barbara

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Appellant M.G.

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